

L&G Engineering

Transportation Consultants

April 15, 2022

Eduardo "Eddie" Cantu
Hidalgo County Commissioner, PCT #2
300 W. Hall Acres, Ste. G
Pharr, Tx 78577

RE: County: Hidalgo
ROW CSJ No. 0921-02-404
EIDora Road: From Jackson Road To Veterans Blvd. (I Road)
Parcel No. 20


Dear Commissioner Cantu:

Attached herewith is a counter-offer as submitted by 281 Distribution 281 Center LP owner of Parcel 20 on April 15, 2022. Brighton Group has reviewed the aforementioned and recommends that counteroffer be **approved**. Attached also is the N-9, Administrative Settlement Evaluation and Approval Form.

Brighton Group believes the counteroffer is a legal and cost savings issue and a timing issue due to the imminent "let" date. More importantly due to recent court awards on similar projects and the cost to litigate through the Special Commissioners' Hearing we recommend that the counteroffer of **\$158,000.00** be accepted.

Please review these documents and feel free to contact me at (956)603-2005 if you wish to discuss this matter personally.

Sincerely,



Fernando "Fred" Herrera
Right of Way Administrator

cc: File
Attachments



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HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-404

Highway: El Dora Road

Parcel No.: 20

Owner's Name: 281 Distribution Center LP

Approved Offer: \$132,325.00

Owner's Counteroffer: \$158,000.00

County: Hidalgo

Project Limits: From FM 3362 (Jackson Rd.)
To Veterans Blvd. (I Road)

Date Offer Sent: 8/13/2021

Date Counteroffer Received: 4/15/2022

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
b. Other: Property owner feels that their property and improvements were undervalued.

2. Legal Issues

- a. Analysis of recent court awards on similar properties or projects.
b. Analysis of recent court decisions which may affect the outcome of a condemnation action.
c. Analysis of previously unlitigated issues.
d. Other: _____

3. Cost Savings

- a. Approximate cost to litigate through Special Commissioners' Hearing \$20,000.00
b. Approximate additional cost to litigate through jury trial \$40,000.00
c. Other: _____

4. Timing Issues

- a. Maintain project schedule: Yes
Possession of this property is needed by: 4/2022
Projected possession date, if settled is: 5/2022
Projected possession date, if condemned is: 09/2022
Letting date: 9/2022
b. Other: _____

5. Other Issues

** The following documents have been considered and are incorporated by reference: appraisals, appraisal review form, owner's counteroffer and supporting documentation, negotiator's log, and _____

Analysis and Conclusion:

Our approval/ disapproval recommendation is based on the items checked above and has been evaluated as follows: (attach additional sheets as necessary)

Parcel 20 is 43,741 sq. ft. or 1.004 of one acre tract of land situated in Hidalgo County, Texas and being in Lot 116, Kelly-Pharr Subdivision, as recorded in Volume 3, page 133. Parcel 20 acquisition only consists of 22,495 sq. ft. the remainder of 21,246 sq. ft. is existing ROW. On August 11, 2021, Brighton Group, Acquisition Provider for the County, made an offer of \$132,325.00 to owner of record, 281 Distribution Center LP, via certified mail. Parcel 20 had been referred to Condemnation contact with landowner had been unsuccessful. Owners are from Mexico and contact was finally established in February and a meeting with owner was immediately scheduled. On February 16, 2022 we met with Mr. Roger Gonzalez and discussed at great length and detail of the offer to him. Mr. Gonzalez stated he would discuss his offer with his father and notify us of their next step. On April 15, 2022 Mr. Gonzalez submitted a counteroffer via email for the County's consideration. Mr. Gonzalez has requested an additional \$25,675.00 in order to cover all necessary costs to be whole again. He stated that the cost of materials have greatly escalated and continue to do so on a daily basis. Mr. Gonzalez feels this is necessary to create the least disturbance to his daily business conducted on this property. After discussion and review by the evaluation team, it is the recommendation that the administrative settlement be approved. The difference between the approved value of \$132,325.00 versus the property owner's counter offer is \$25,675.00. We believe that the proposed counteroffer is within a reasonable range and seek the County's consideration for approval. This amount does not warrant the risk and added expenses associated with standard eminent domain proceedings. Accepting said counter offer will help avoid project time delays, and associated condemnation proceedings, thus resulting in a cost savings to the county.

This administrative settlement of \$158,000.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):



Project Engineer/ROW Administrator

4/17/2022

Date

RPIC/Authorized Pct. Representative

Date

COUNTY APPROVAL:

County Judge

Date



Alice Rodriguez <alice@brightongroup.org>

Fwd: 281 Distribution Property/EI Dora and Exp 281

1 message

Joseph Palacios <joseph@brightongroup.org>
To: Alice Rodriguez <alice@brightongroup.org>

Fri, Apr 15, 2022 at 4:55 AM

----- Forwarded message -----

From: **Roger Gonzalez** <roger@onestopgroup.com>
Date: Fri, Apr 15, 2022 at 2:10 AM
Subject: 281 Distribution Property/EI Dora and Exp 281
To: Joseph Palacios <joseph@brightongroup.org>

Hello Mr.Palacios I appreciate your time, I spoke to my father as well as our engineer. Our position is that the amount offered by the county is low, we need a minimum of \$158,000dls for the purchase of the right of way. We understand there has been an appraisal that has been done by a third party.

The reasons behind our position of counter offer are the following.

- Cost that our company has to carry for the subdivision cost after the purchase of the right of way are a lot higher that what is offered.
- Construction materials have gone up over the past couple of weeks bringing our cost to make adjustments to our property higher.

I appreciate your help and look forward to working with your firm in getting this matter solved in way that is best suitable for my represented firm as well as for the county.

Thank You and have a good week

Roger

**Roger
Gonzalez**

Director de
operaciones

+52 (81)-1119-0824

roger@onestopgroup.com

Joseph Palacios
CEO



BRIGHTON GROUP

2805 Fountain Plaza Blvd., Ste A-2 Edinburg, TX 78539

Date: August 11, 2021

County: Hidalgo
Federal Project No.: N/A
Highway: Eldora Road

ROW CSJ: 0921-02-404
Parcel ID: 20
From: Jackson Road
To: Veterans Blvd (E Road)

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7020 1290 0000 4061 4534

281 Distribution Center LP
1120 E Produce Rd
Hidalgo, TX 78557-4326

Dear Sirs & Madams,

In acquiring property for the highway system of Texas, the Texas Department of Transportation (the "Department") and Hidalgo County (the "County") follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As has been or will be explained by the County's negotiator, Joseph Palacios, a portion of your property located on Eldora Road, as described in the enclosed property description, is to be acquired for the construction or improvement of the above-referenced highway project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the County is authorized to offer you \$132,325.00 for your property, which includes \$128,023.00 for the property to be purchased and \$4,302.00 for damages to your remaining property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the County. In accordance with State law, it is the policy of the Department/County to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the Department/County.

This offer to purchase includes the contributory values of the improvement(s) listed below, which are considered to be part of the real property. Since the improvement(s) must be removed, it is the policy of the Department/County to permit owners who convey voluntarily to the Department/County to thereafter retain the improvement(s), if they wish to do so. The retention values shown below are the estimated amounts the improvement(s) would bring if sold on public bids. If you wish to retain title to any of the following improvement(s) and remove it (them) from the right of way, the amount of the above offer must be reduced by the appropriate retention amount(s). This option to retain the improvement(s) does NOT apply should it become necessary for the Department/County to acquire the real property by eminent domain.

<u>Improvement</u>	<u>Amount to be Subtracted if Retained</u>
A. Sign-Pylon	\$1.00
B. Fence-Metal w/Erick Columns	\$1.00
C. Landscaping-Trees (2)	\$1.00

If you wish to accept the offer based upon this appraisal, please contact me as soon as possible, at (956) 603-2005, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the Department/County within the 30 day time deadline.

In the event the condition of the property changes for any reason, the County shall have the right to withdraw or modify this offer.

After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the property for use by the Texas Department of Transportation/Hidalgo County. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the County and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the Department/County failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the Department's/County's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the State's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure entitled "Relocation Assistance" which will inform you of eligibility requirements, payments and services which are available.

You have the right to discuss with others any offer or agreement regarding the Department's/County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply to the Department.

Attached is a copy of the Texas Department of Transportation brochure entitled "Right of Way Purchase" which we trust will give you a better understanding of the procedures followed by the Department/County in purchasing property. We respectfully request the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the details of the type of facility to be built, or concerning the County's offer or proposed purchase transaction. Also, please do not hesitate to contact me at the telephone number provided above regarding any question you may have.

Please see the enclosed copy of the Texas Landowner Bill of Rights.

Finally, we enclose copies of all appraisal reports relating to your property being acquired which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the Department/County, including the appraisal on which this offer is based.

Sincerely,

Right of Way Manager or other signatory

- ENCLOSURES:
Appraisal Report(s)
Landowner Bill of Rights
Brochure ("Right of Way Purchase")



REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 3700 North Cage Boulevard, Pharr, Texas 78577 District: 21
Property Owner: 281 Distribution Center LP Parcel: 20
Address of Property Owner: 1120 Produce Road, Hidalgo, Texas 78557 ROW CSJ: 0921-02-404
Occupant's Name: 281 Distribution Center LP Federal Project No: N/A
Whole: Partial: Acquisition Highway: Eldora Road County: Hidalgo

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple title to the real property to be acquired, encumbered by any easements not to be extinguished, less oil, gas and Sulphur. If this acquisition is of less than the whole property, then any special benefits and / or damages to the remainder property must be included in accordance with the laws of Texas.

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is \$132,325.00 as of November 23, 2020, based upon my independent appraisal and the exercise of my professional judgment:

That on November 23, 2020, I personally inspected in the field the property herein appraised; that I afforded 281 Distribution Center LP, the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection;

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on November 23, 2020:

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than The Brighton Group and the proper officials Hidalgo County and/or their representatives, or officials of the Federal Highway Administration until authorized by State officials to do so, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified to such findings:

That my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB-18 of the Texas 82nd Regular Legislative Session and finds as follows:

- 1. Is there a denial of direct access of the parcel? No (yes or no)
- 2. If so, is the denial of direct access material? No (yes, no, or not applicable)
- 3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$ 0 .

I certify to the best of my knowledge and belief:

That the statements of fact contained in this report are true and correct;

That the reported analysis, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analysis, opinions, and conclusions:

That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved:

That my analysis, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State laws, regulations, and policies and procedures applicable to the appraisal of right-of-way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration within the reasonable control of the owner, has been disregarded in estimating the compensation for the property.

Appraiser Signature
Leonel Garza III
Certification Number
TX 1328375 - G
Date: February 2, 2021

To the best of my knowledge, the value does not include any items which are not compensable under State law.
Harvey L. Heerssen 2/5/2021
Reviewing Appraiser Date



TABULATION OF VALUES

Parcel: **20** Highway: **Eldora Road** ROW CSJ: **0921-02-404**
 Taking Type: Partial District: Pharr
 Size of Remainder: 8.381 Acres County: Hidalgo
 Type of Property: Improved/Light Industrial Federal Project: N/A
 Contract Fencing: N/A
 Appraised by Leonel Garza III
 Date Appraised: 11/23/2020

Access will be provided or denied to the new facility. If access will be partially provided or denied, explain in comments.

Agency	Participating Percentage	Expense Description
State of Texas	80%	ROW Acquisition Expenses
Hidalgo County Precinct No. 2	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
281 Distribution Center LP	Fee Simple	22,495 sf.	\$112,475.00	No
	Existing ROW	21,246 sf.	\$0.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$112,475.00	\$15,548.00	\$0.00	\$4,302.00	\$132,325.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Sign	Pylon	\$11,250.00	\$1.00	N/A
B.	Fence	Metal w/Brick Columns	3,998.00	1.00	N/A
C.	Landscaping	Trees (2)	300.00	1.00	N/A

TABULATION OF VALUES (continued)

Parcel: **20**

Highway: **Eldora Road**

ROW CSJ: **0921-02-404**

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$4,302.00	\$4,302.00

IV. Sign Values

Item No.	Sign Owner	Type Construction	Improvement Value	Retention Value	Bisect. Cat.
N/A	N/A	N/A	N/A	N/A	N/A
Total			\$0.00	\$0.00	

V. Recapitulation

Date:	11/23/2020			Recommended Value
Appraiser's Name:	Leonel Garza III			
Value of Whole Property	\$2,114,020.00			\$2,114,020.00
Parcel Area: 22.495 Net sf.				
VALUE FOR PARCEL				
Land: per_sf. \$5.00	\$112,475.00			\$112,475.00
Easement	\$0.00			\$0.00
Improvements	\$15,548.00			\$15,548.00
Net Damages or (Enhancements)	\$4,302.00			\$4,302.00
OAS Value(s)	\$0.00			\$0.00
TOTAL COMPENSATION	\$132,325.00			\$132,325.00

Calculations for Net Damages or (Enhancements) considers Direct Access Denial damages.

TABULATION OF VALUES (continued)

Parcel: 20

Highway: Eldora Road

ROW CSJ: 0921-02-404

VI. Comments and Conclusions on Values in the Appraisal Report

Appraiser: Leonel Garza III
Effective Date of Report: November 23, 2020
Report Dated: February 2, 2021
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: February 4, 2021

Parcel 20 is a partial taking of 1.004 gross acres (43,741 gross sf.) situated in Lot 116, Kelly-Pharr Subdivision, as recorded in Volume 3, Page 133, of the Deed Records, Hidalgo County, Texas, being out of a called 9.385 acre tract of land conveyed to 281 Distribution Center, LP by a Warranty Deed with Vender's Lien dated December 29, 2003 and recorded on December 31, 2003, as described in Document Number 1281280 of the Official Records of Hidalgo County, Texas.

The whole property of 9.385 acres is located at the northeast corner of Eldora Road and US 281, Pharr, Texas. The subject whole property is improved with portable office building that are personal property along with related site improvements. The portable personal property buildings are not impacted by the proposed acquisition.

The total acquisition of 43,741 sf includes an amount of 21,246 sf. within the existing right of way of Eldora Road leaving a net taking of 22,495 sf. The existing right of way portion has no value. The square footage amount within the existing right of way was provided to the appraiser by the surveyor.

The appraiser Leonel Garza III has selected three (3) recent sales to value the whole tract at \$5.00 per sf. The subject property is ideally located on US 281 and Eldora Road thereby indicating a higher per sf. value than the other parcels on this project. The highest and best use is for light industrial development or commercial purposes. There are no market damages to the remainder land. Cost to cure is necessary to compensate for the sign and fencing that were depreciated within the acquisition to replace these items on the remainder to retain the same utility.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82nd Regular Legislative Session. The result of the findings is that there is no denial of direct access nor material impairment of direct access on or off the remaining property that affects the market value of the remaining property. Therefore, there are no access damages to the remainder property.

The report prepared by the appraiser Leonel Garza III is an Appraisal Report presented on TxDOT form ROW-A-5 and appears to comply with USPAP and the Texas Department of Transportation's Appraisal and Review Manual. The appraisers' opinion and conclusions appear to be well supported by information contained within this appraisal report. It is recommended that the total value of \$132,325.00 be approved for negotiations and acquisition.

VII. Justification and Explanation for Credit if Retained.

A retention of \$1.00 is applied to the pylon sign and metal fencing to encourage retention and removal.



L&G Engineering
Transportation Consulting Engineers

2100 W. Expressway 83 Mercedes, TX 78570
 Phone: (956) 565-9813 Fax: (956) 565-9018
 Toll Free: (888) 565-9813 Firm No. F-4105

900 S. Stewart Rd., Ste. 10 Mission, TX 78572
 Phone: (956) 585-1909 Fax: (956) 585-1927
 Toll Free: (866) 585-1909

Letter of Transmittal

The Honorable Eduardo "Eddie" Cantu
Attn: Erika Zamora
 Hidalgo County Precint No. 2
 300 W. Hall Acres Ste. G
 Pharr, Texas 78577

DATE:
 April 21, 2022

RE:RSCJ: 0921-02-404
 Eldora Road

TRANSMITTED:

<input checked="" type="checkbox"/> For Your Use	<input type="checkbox"/> Please comment	<input type="checkbox"/> Approved as Noted
<input type="checkbox"/> As Requested	<input type="checkbox"/> Reply ASAP	<input type="checkbox"/> As Noted Below


VIA:

<input type="checkbox"/> US Mail	<input type="checkbox"/> Courier	<input checked="" type="checkbox"/> Hand Carry
<input type="checkbox"/> E-Mail	<input type="checkbox"/> Lonestar Overnight	<input type="checkbox"/> Pick up

COPIES	DESCRIPTION
1	Eldora Road – N-9 Counter Offer Recommendation for the following:
	Parcels No. 20 (Brighton Group)

REMARKS:
 Should you have any questions or need additional information, please do not hesistate to contact our office at (956) 585-1909.

Thank you in advance,
 Fernando "Fred" Herrera
 ROW Administrator



Received By: _____
Date: _____ **Time:** _____

P2 ADMIN
 2022 APR 22 AM 10:56